

Remark:

The Final office action dated 12/01/2009 was carefully reviewed. According to this Final office action, claims 86-88, 92-128 and 135-175 are rejected under 35 U.S.C. 101. Basically there are three major issues to be resolved between the office action and the applicant:

- (A) Both parties agreed on the principle that a method or process is statutory under 35 U.S.C. 101 if the method or process transforms a matter to another state or thing. The two parties had yet to agree if the recitation of the rejected claims had addressed this property for overcoming the rejection under 35 U.S.C. 101.
- (B) The office action interprets the term "programming tool" recited in the pending claims as a "software" and therefore not statutory. The applicant interprets this term as a "complete system" (software only is not complete and inadequate to service the intended purpose) that is suitable for a programmer to program a computing device.
- (C) In the response dated November 20, 2008, the applicant amended the specification so that applicant's interpretation of the term "programming tool" is clearly defined in the specification. The latest office action objected the amendment of specification due to new matter reason.

Patent rules had been very clear on how to resolve the subject issues. All these subject issues are to be resolved according to patent rules in view of the solid supporting evidences. The applicant respectfully submits the following arguments, each is well supported by applicable patent rules. Listed below is a quotation of MPEP 707.07(f):

Answer all material traversed:

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

If the argument is to be declined by future office action, the examiner is respectfully requested to provide counter supporting patent rule and factual supporting evidences for the evaluation of the applicant.

(A) A process that transforms a matter to another state or thing:

In the language of the subject claims, the applicant specified the "programming tool" to be the machine tied to the method steps. Therefore if the term "programming tool" failed to be interpreted as the machine tied to the process, then the ground left over for complying with the requirement of 35 U.S.C. 101 is to be relied on the transformation of the subject matter from one state into another state or things.

Both parties agreed on the principle that a method or process is statutory under 35 U.S.C. 101 if the method or process transforms a matter to another state or thing, as set forth by precedent court ruling In re Belski 2007-1130 (Serial No. 08/833,892). According to the last paragraph, page 5 of the office action dated 12/01/2009, the office action recites:

The nominally claimed transformation step is merely a manipulation of an abstract idea (from the specification, applicant has "defined" the invention as a manipulation of data tables that represent logical thinking of a programmer).

The applicant acknowledges that part of the processes of applying the subject programming tool may involve human manipulation of data table, however the applicant does not agree on the interpretation that the transformation step is a manipulation of an abstract idea. Firstly, the applicant had conducted a word search of the specification but could not find the subject "definition" as quoted by the office action. If the subject ground of rejection based on this reason is to be withheld, the examiner is respectfully requested to quote the page number and line number where such definition quotation was found in the original specification, so that the applicant is able to correct any error imposed in the specification.

Secondly, even if the office action is able to identify where this manipulation feature had been recited, it was obvious that the office action erred to treat the specification recitation (Note: **NOT** the claim recitation) that the programming process involves human manipulation of the data tables as the claimed transformation and therefore the subject claims are not statutory. The examiner is respectfully requested to evaluate the subject matters transformation according to the claim recitation to determine if the claims comply with the requirement of 35 U.S.C. 101. As mentioned in applicant's response dated 11/19/2008, the applicant had emphasized that pending independent claims 86, 92, 114, 120, 135, 148, 154, 170 and 175 had been amended to recite the "original matter before transformation" of the claimed programming tool or process to be the configuration states and paths data "after" they are composed/filled by the programmer (as shown on the monitor screen of a programming tool illustrated in Figure 4, 5A, 5B, 6A, 6B and 10). The "transformed matter" recited in each of these independent claims are identified to be the compiled codes executable by the computing device. Since these codes are characterized to be executable by the computing device to be programmed, the transformed subject matter is tangible result and not abstract leads. It is also respectfully submitted that there is absolutely no way for normal human brain activity be able to carry out this transformation of transforming table datas into codes executable by computers. It is part of the jobs of the claimed "programming tool" to carry out this transformation. **Since both the matters before and after the transformation carried out by the "programming tool" had been identified and clearly recited in each pending independent claims, the requirement of 35 U.S.C. 101 had been satisfied.**

Subsequent office actions merely repeated the transformation requirement of 35 U.S.C. 101 but failed to point out how or why the matters being transformed and recited in the subject claims were not valid. Listed below is a quotation of MPEP 707.07(f):

Answer all material traversed:

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

The examination process that failed to response to all traverses that were accompanied by quotation of supporting law quoted makes it extremely difficult for the applicant to further revise the claims or arguments for allowance. If the ground of rejection under 35 U.S.C. 101 is to be withheld, the examiner is respectfully requested to provide reasons why the identified matters before transformation and the matters after transformation recited in the subject claims were unable to meet the requirement of 35 U.S.C. 101?

(B) Interpretation of terms:

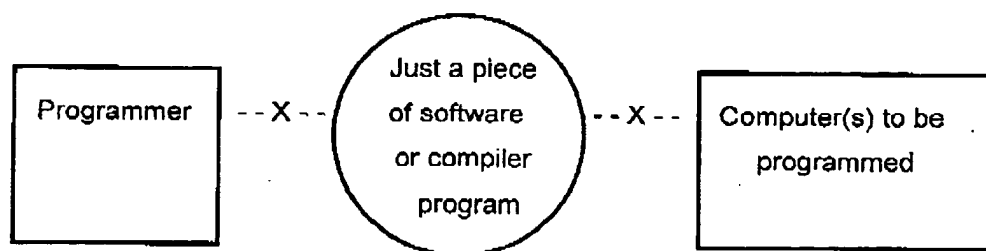
Both parties agreed that the claimed steps are tied to a "programming tool". However, on page 5, last paragraph of the office action dated 12/01/2009 recited:

Since the specification, as originally filed, describes the invention as an interface between programmers and computers (i.e. software)....

Accordingly the office action indicated that the subject claims are tied to a "programming tool", which is a software that failed to meet the requirement of 35 U.S.C. 101. In the position of the applicant, the term "programming tool" is well known to anyone having ordinary knowledge in the art, and therefore major portion of the specification had been spent into describing how the software portion and programming portion of the subject programming tool is to be distinguished from other "programming tools" currently available in the market. This approach of drafting the specification does not mean that the applicant had the intention of equating the term "programming tool" to be identical to a "software". The examiner is also respectfully directed to carefully read the original claim 1 and claim 4. Claim 1 explicitly recited "programming tool" as the subject matter while claim 4 explicitly recited "a computer program" (a software) as a subject matter. This is an evidence that the two terms are of different properties in the scope of the subject invention. If the subject matter of invention is directed to a software, the

applicant would explicitly recite a computer program (a software) and not a "programming tool". Secondly, the examiner is respectfully directed to note that while inside a "programming tool", it may comprises a software, it does **NOT** mean that the scope of "programming tool" should only be limited to a pure software, unless the office action is able to find recitation in the specification that had explicitly acknowledged such equivalence. Because the subject specification **DID NOT EXPLICITLY** recite that the term "programming tool" is purely a software, therefore this interpretation is not supported by the original specification. If the office action is based on third party reference other than the subject specification to prove that "programming tool" should be interpreted as a "pure software", the office action is respectfully requested to provide such evidence for the evaluation of the applicant.

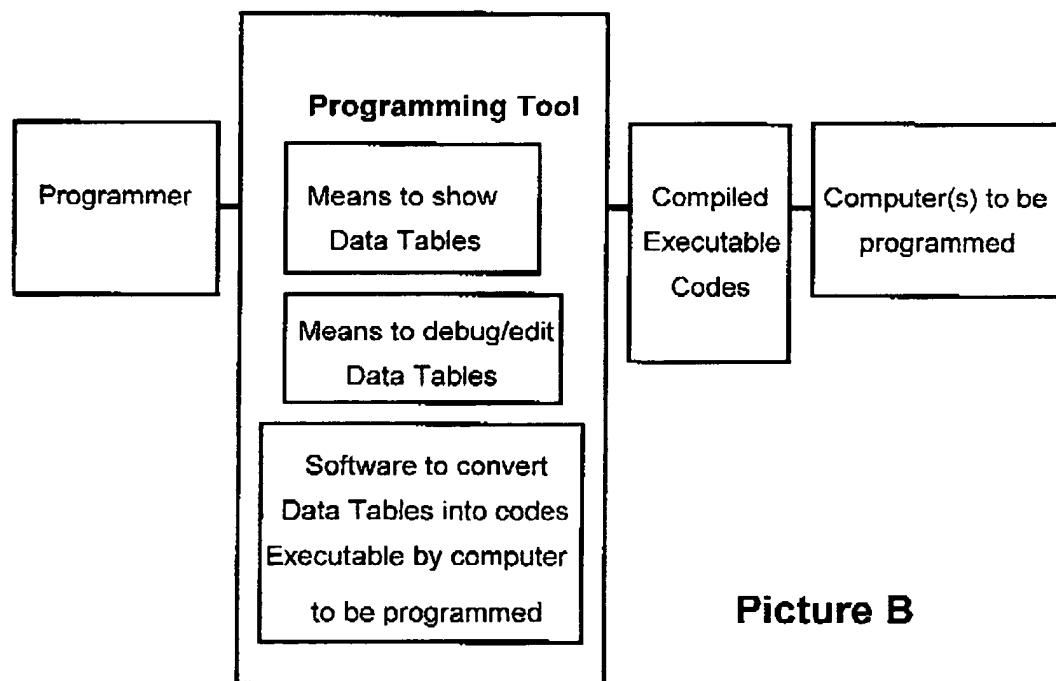
The patent law and rules of our country is very complete and mature to how claim terms are to be interpreted. Proper interpretation of terms should follow the teaching of related patent rules and the factual evidences provided by the specification. Picture A listed below is how the interpretation of the office action (programming tool is a software) is illustrated by a graphical representation:



Picture A

According to this graphical representation of the interpretation of the term "programming tool" to be a pure software, it is obvious that a pure software or compiler program without adequate system support of hardware is **NOT** able to interface between a programmer and a computing device to be programmed.

In contrast, various description of the specification provides a reconstruction how a "programming tool" is able to effectively interface between a programmer and a computing device to be programmed. Picture B listed below is how the interpretation (programming tool as a system) is illustrated by a graphical representation:



Picture B

Features of Picture B are well supported by the description of the original specification.

Means to show data tables is represented by display of Figures 4, 5A, 5B, 6A, 6B and 10

and as recited in first paragraph, page 11 of the original specification. Means to debug data tables may be represented by the debugging hardware recited at first paragraph, page 11 of the original specification. The compiling software had been recited in last paragraph of page 7, third and last paragraphs of page 8, second paragraph of page 10 and first paragraph of page 12, of the original specification. The resulted compiled executable codes had been recited in the first paragraph of page 12 of the original specifications. Listed below is a quotation of MPEP 2111.01 I:

MPEP 2111.01 I - Plain Meaning [R-5]

I.THE WORDS OF A CLAIM MUST BE GIVEN THEIR "PLAIN MEANING" UNLESS **>SUCH MEANING IS INCONSISTENT WITH< THE SPECIFICATION

In re American Academy of Science Tech Center, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004)

The purpose of the Picture A and Picture B comparison is to proof that if the term "programming tool" is interpreted as a pure software, then it fails to meet the requirement to really interface a programmer to a computing device to be programmed. Accordingly this interpretation is inconsistent with the original specification and therefore fails to meet the requirement of MPEP 2111.01 I. The ground to interpret the term "programming tool" to be a software is therefore respectfully requested to be withdrawn.

Since the specification did not explicitly recited the term "programming tool" to be a pure software and that the applicant had provided proven evidence to traverse the interpretation that "programming tool" is a pure software, if this interpretation is to be withheld, the examiner is respectfully requested to provide solid evidence how this

interpretation is explicitly acknowledged by the subject specification or supported by any applicable patent rule?

(C) Amendment of specification:

The office action dated 12/01/2009 had objected the amendment of specification submitted on 11/20/2008. The applicant had spent "extremely careful" effort to review the subject amendment of specification and make sure the content is well supported by applicable patent rules. Accordingly the subject specification is now amended to make sure the characteristics of the amendment is well covered by the original specification and supported by applicable patent rules to overcome "new matter" issue.

Listed below is the anatomy of the revised specification amendment:

(a) Rephrasing of terms:

Listed below is a quotation of MPEP 2163.07 I:

MPEP 2163.07 I

Rephrasing is not new matter:

Mere rephrasing of a passage does not constitute new matter. Accordingly, a rewording of a passage where the same meaning remains intact is permissible. In re Anderson, 471 F.2d 1237, 176 USPQ 331 (CCPA 1973).

Accordingly rephrasing the term "programming tool" to "programming system" or "development system" is not a new matter. Amendment of specification, page 12 is also a rephrasing process therefore is not a new matter.

**(b) Further support recited in the original specification for the term
“programming system”.**

As a further support of applicant's interpretation of the term “programming tool” or “programming system”, in page 11 first paragraph, the original specification recites the hardware facilities that may be included into the scope of the invention:

In addition to computers, other supporting hardware required to support the invented technology are the debugging hardware, communication links such as cables, communications ports, hubs and networks as defined in the specification. The table format program may be displayed on display terminals, printed on printers, and encoded as digital data. The compiled or encoded digital data representing the table format program may be stored in any memory device such as RAM, ROM, disk drive, and CD ROM. The technical terms, keywords and labels used in the embodiments are exemplary and numerous modifications, specification variations and table format rearrangements can be readily envisioned to achieve an equivalent result, all of which are intended to be embraced within the scope of the appended claims.

Page 11 of the specification is amended to identify the hardware that may be included into the scope of the system quoted herein. Since these hardware features had already existed in the original specification, therefore no new matter had been involved.

(c) Programming of a local computer:

The original specification had recited this local computer feature in various areas. An example is page 12, first paragraph, lines 1-3 of the original specification. According this amendment of the specification is not a new matter.

(d) Programming of remote computer:

The original specification had recited this remote computer feature in various areas. An example is page 10, first paragraph and page 12, first paragraph, lines 1-3 of the original specification. According this amendment of the specification is not a new matter.

(e) Amendment of specification is now proper:

According to the law supported evidences provided herein, the current amendments of specification are all considered to be proper not to involve new matter. The subject specification amendments are respectfully requested to be entered. If any part of the subject specification amendment is to be objected, the next office action is respectfully requested to identify which part of the amendment is considered to be a new matter, while quoting the supporting patent rules and reasons why the identified portion is considered as a new matter?

Since the matters before transformation and the different matter after transformation had been clearly recited in the pending claims, and that the amendments of specification are now carefully restricted to those allowable by patent rules, the ground of rejection according to 35 U.S.C. 101 should now be overcome. Full allowance of the subject claims is respectfully solicited.

[End of Remark]